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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

10 CR 923 (DC)

5 ZUBAIR TAHIR,

6 Defendant.

7 -----x

8 New York, N.Y.
9 October 11, 2013
10:11 a.m.

10 Before:

11 HON. DENISE COTE,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA,

16 United States Attorney for the
Southern District of New York

17 BY: CAROLINA F. FORNOS

Assistant United States Attorney

18 JOSHUA LEWIS DRATEL

19 LINDSEY LEWIS

Attorneys for Defendant

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(In open court)

(Case called)

MS. FORNOS: Good morning, your Honor. Carolina Fornos on behalf of the United States, and with me at the counsel table Agent Theresa McKeever from the FBI.

MR. DRATEL: Good morning. Joshua Dratel for Mr. Tahir. Mr. Tahir is standing next to me, and with me is Lindsey Lewis of my office.

THE COURT: Good morning, everyone. Mr. Dratel, have you and your client both read the presentence report?

MR. DRATEL: We have, your Honor.

THE COURT: And have you discussed it with each other?

MR. DRATEL: Yes.

THE COURT: Other than what might be contained in your written sentencing submissions, do you have any other objections to the presentence report?

MR. DRATEL: No, your Honor. We had submitted something to probation. They appear to have either been incorporated or -- with respect to some of the financial numbers. We have reached an accord with the government; so those are effectively withdrawn in that regard. We have an agreement and it's contained in writing in terms of the forfeiture, the consent order of forfeiture, and sort of the delineation of that.

THE COURT: Thank you so much. The presentence report

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1 will be made part of the record in this case and placed under
2 seal. If an appeal is taken, counsel on appeal may have access
3 to the sealed report without further application to this court.

4 I have before me a consent preliminary order of
5 forfeiture. I'm not sure this should be preliminary anymore.
6 Miss Fornos?

7 MS. FORNOS: Your Honor, yes, it should be a consent
8 order of forfeiture, your Honor. Apologies.

9 THE COURT: So the money judgment which the parties
10 have agreed to is the forfeiture of \$2,923,869, and I will sign
11 the order now.

12 There have been a number of submissions to me in
13 connection with this case. The defendant provided a submission
14 of October 4th, and I don't know if that's been filed on the
15 ECF system.

16 MR. DRATEL: No, your Honor, due to some of the
17 sensitive matters in there. If the Court wishes, we could do a
18 redacted one at some point.

19 THE COURT: Yes.

20 MR. DRATEL: Okay.

21 THE COURT: So you need to give me a clean copy for
22 sealing, any pages that contain redactions, and you need to
23 file the redacted copy on the ECF system. And I assume the
24 only redactions would be reference to the defendant's
25 cooperation?

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1 MR. DRATEL: Yes, and perhaps there's some personal
2 family stuff that -- we'll go through that. I'm not sure if
3 that's -- also in terms of where he works now, things like that
4 that might identify his current whereabouts, in terms of job,
5 but we'll go through it, your Honor, and, obviously, not redact
6 beyond what's necessary.

7 THE COURT: Well, there is guidance given in our ECF
8 rules with respect to proper redaction issues.

9 MR. DRATEL: Right.

10 THE COURT: And I don't know that his current
11 employment would be covered by that, and I don't have a showing
12 to suggest that that would be necessary.

13 MR. DRATEL: Well, your Honor, part of the reason why
14 he had to seek employment outside this area, the metropolitan
15 area, because he's lived in New Jersey for some time, is
16 because of the effect of his cooperation in the community,
17 ostracism, people confronting him in public places; so that was
18 part of it. So I just prefer that we not have to mention where
19 he is on that level.

20 THE COURT: Any objection by the government?

21 MS. FORNOS: No, your Honor.

22 THE COURT: Okay. I'll permit you to redact those
23 portions that mention the place and name of his current
24 employer.

25 MR. DRATEL: Thank you, your Honor.

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1 THE COURT: You're welcome. And, Mr. Dratel, could
2 you make those filings by Tuesday?

3 MR. DRATEL: Yes, your Honor.

4 THE COURT: Good. And then I have a submission from
5 the government dated September 27th. That hasn't been filed on
6 ECF either, I don't believe.

7 MS. FORNOS: No, your Honor, it has not.

8 THE COURT: And, Miss Fornos, have you provided us
9 with a separate copy for filing under seal?

10 MS. FORNOS: No, your Honor, we have not, but we can
11 certainly do that.

12 THE COURT: And, similarly, to the extent there are
13 portions here that can be filed in the public record, can you
14 do that, please, by Tuesday as well?

15 MS. FORNOS: Yes, your Honor.

16 THE COURT: Thank you. Okay. There is some
17 discussion about the restitution amount and what that proper
18 number should be, and the number that I have as a working
19 number is \$723,056.21. Is that the correct number?

20 MS. FORNOS: I'm sorry, your Honor, can the Court
21 repeat that number? It's the amount that's set forth in the
22 PSR.

23 THE COURT: Okay.

24 MS. FORNOS: We do not object to that. Your Honor, my
25 apologies. Can we go back to the 5K? I was under the

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1 impression that the 5K is never filed, even a redacted version
2 is never filed on ECF. If the Court does want a redacted
3 version, it would be heavily redacted on ECF.

4 MR. DRATEL: Your Honor, the --

5 THE COURT: I think that the first two-and-a-half
6 pages probably don't require any redactions.

7 MS. FORNOS: Certainly we can redact the bottom line
8 of the first paragraph, referencing that we're moving under 5K?

9 THE COURT: Yes.

10 MS. FORNOS: And we can certainly leave the
11 preliminary statement and the case background and redact the
12 remainder.

13 THE COURT: Thank you.

14 MS. FORNOS: Sure. Thank you.

15 THE COURT: My chambers called counsel to raise with
16 them a portion of the presentence report that referred to a
17 special condition about a prohibition on employment, and I have
18 received from counsel this morning a draft of a proposed
19 prohibition that reads as follows: Defendant will not engage
20 in the business of buying or selling real estate for a profit,
21 including but not limited to refinancing real estate, brokering
22 loans, dealing in mortgages or constructing homes for sale.
23 Nothing in this paragraph is intended to preclude the defendant
24 from purchasing or refinancing his own home for purposes of
25 residing in that home or selling his personal residence. To

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1 the extent the defendant seeks employment to work in
2 construction, the defendant may do so subject to prior approval
3 of his probation officer.

4 Is there consent by the government to that special
5 condition?

6 MS. FORNOS: Yes, your Honor.

7 THE COURT: By you, Mr. Dratel?

8 MR. DRATEL: Yes, your Honor.

9 THE COURT: Thank you. Why I raise the question about
10 the accuracy of the restitution amount, there was a defense
11 argument about a recouped loss; so again, Mr. Dratel will have
12 a chance to be heard on this issue, but I just want to flag it
13 so we're in agreement on the restitution amount.

14 So this is a case in which there is an agreement that
15 the guidelines range is 37 to 46 months, based on an offense
16 level of 21 and a criminal history category of I. There is
17 also an anticipated motion pursuant to 5(k)(1.1) for me to
18 consider the defendant's substantial assistance to the
19 government not only in connection with the crime at issue, but
20 also a second scheme of which he became aware. There are
21 additional 3553(a) factors that defense counsel has
22 highlighted, including the impact on the defendant's family,
23 his ostracism in the community and certain medical issues.

24 The presentence report at Page 14, and perhaps at
25 other places, raised questions about the defendant's finances

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1 and whether we have a good RIP or not, money at his disposal,
2 and how he's currently conducting his life financially. I
3 bring that to the parties' attention so they can address it, to
4 the extent they would like to.

5 There's a second issue that I'd like the parties to be
6 prepared to address, to the extent they would like to. I'm
7 interested in knowing how strong the case that the government
8 had against the defendant was at the time of his arrest, and I
9 guess, the related aspect of that from the defendant's point of
10 view is really motivations for cooperating, what he understood
11 realistically his options were. Again, the defendant doesn't
12 need to provide me with any information or argument, but I'm
13 just flagging this as something I am interested in.

14 As I understand it, the defendant's involvement in the
15 scheme concerned six properties, one of which was an apartment
16 building with four units. There was structuring involved to
17 avoid reporting obligations to financial institutions or by
18 financial institutions and the use of straw buyers and
19 kickbacks. I'll turn to the government. Is there anything the
20 government wishes to say in connection with this witness?

21 MS. FORNOS: Yes, your Honor. There are things that
22 we want to say. As the Court is aware, the defendant provided
23 substantial assistance to the government, and the details of
24 that assistance is set forth in the government's submission to
25 the Court. What we do want to emphasize, your Honor, is that

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1 in addition to his cooperation at the time of his arrest, that
2 directly led and facilitated the conviction of his
3 co-conspirators in the mortgage, the Court was asking about the
4 strength of the government's case.

5 The strength of the government's case at that time,
6 what we had was an historical case, a paper case, a financial
7 records case, and we did have a recorded conversation from the
8 defendant. The defendant was not -- had a choice. The
9 defendant had a choice at that time, and he chose to cooperate.
10 Your Honor, may I have one moment?

11 (Pause)

12 And what is notable, and Special Agent McKeever, who
13 is here -- and she was in charge of that investigation, and
14 that's why I am conferring with her to make sure that my facts
15 are accurately represented to the Court. From the moment that
16 he was arrested in the car, Mr. Tahir started explaining the
17 facts of his involvement in this case. That's very significant
18 because, at that point, the FBI was able to use his information
19 to continue to build its case and eventually successfully lead
20 to the arrest of his co-conspirators.

21 And we are now in a situation where all of those
22 co-conspirators have now been -- have pled guilty and have been
23 convicted by this Court. It is certainly, without any doubt,
24 the defendant's cooperation directly led to all of those
25 co-conspirators pleading guilty. My colleague, Dan Goldman,

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1 handled that case.

2 And the reason I'm here before the Court, your Honor,
3 is because Mr. Tahir didn't just stop at that cooperation. He
4 was approached -- Following his cooperation with respect to the
5 mortgage, he was approached by individuals to cash Treasury
6 checks. He did the right thing, your Honor. He didn't become
7 involved in that scheme. He immediately contacted Special
8 Agent McKeever, and as a result of his information, we were
9 able to open an investigation.

10 But it wasn't just providing information, your Honor.
11 He worked proactively. He went to meetings with these
12 individuals who were trying -- who had possession of fraudulent
13 treasury checks, and in our submission we state that it was
14 about 330,000. It was actually closer, your Honor, closer to
15 \$400,000, ultimately, that was recovered by the FBI in stolen,
16 fraudulent Treasury checks, which had been filed without the
17 knowledge of the original taxpayer.

18 And as a result, Mr. Tahir not only provided us that
19 information, but he also worked proactively with the FBI. He
20 went to meetings. He wore a recording device. He was
21 debriefed by the FBI after these meetings. His involvement and
22 his participation, without a doubt, your Honor, has been
23 substantial. But for -- and we can say this. But for his
24 initial tip to the FBI, the FBI would have never known about
25 this conspiracy. And with his assistance, with his proactive

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1 assistance, the FBI was able to ultimately charge -- we were
2 able to charge a total of four individuals. All of those
3 individuals, your Honor, have pled guilty. Three of them have
4 been sentenced. One, the remaining defendant, will be
5 sentenced next week.

6 Notably, your Honor, his information directly led to
7 that case, which I prosecuted and I was involved in, and I am
8 very familiar with all the facts of that case and the work that
9 Mr. Tahir did with the FBI. But we would also note that it was
10 Mr. Tahir's information that has now, indirectly, led to
11 several spinoff investigations, which are ongoing, and we will
12 just represent to the Court that these are significant
13 investigations, and it all originated from Mr. Tahir.

14 As such, we certainly submit to the Court that his
15 cooperation has been substantial, not just with the original
16 charges, where he immediately cooperated with the federal
17 government without even knowing all of the evidence that the
18 government had. He enabled the FBI to make that case because,
19 as I previously indicated, the case was mainly financial.
20 We're talking about mortgage fraud. It's the financing -- the
21 financial evidence that the FBI was pursuing.

22 Mr. Tahir did enable us to proceed and unravel the
23 entire scheme, but in addition, his proactive cooperation with
24 respect to the Treasury fraud scheme was significant, your
25 Honor. And it is because of that that we ask that the Court

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1 consider a departure from the guidelines, pursuant to 5(k).

2 THE COURT: Mr. Dratel?

3 MR. DRATEL: Yes, your Honor. With respect to the
4 specific question about the genesis of the cooperation, at that
5 time and I was involved from the beginning so I can speak to
6 it, is that -- and without getting into privileged
7 conversations, but I can say that it wasn't my idea in the
8 sense that I had not seen discovery. I had not had a chance to
9 evaluate the strength of the government's case. It was
10 Mr. Tahir who was the engine of that cooperation.

11 In addition, in the context of discovering documents
12 at the beginning of that process, it was Mr. Tahir who actually
13 brought documents to the proffer sessions with the government
14 in the cooperation sessions, ultimately, after we had the
15 agreement, but even in those initial conferences, to go over
16 with the government those transactions and identify those that
17 were subject to prosecution, also those who were involved in
18 them and what the relative roles were of various people who
19 ultimately were charged or not charged, but that's, obviously,
20 the government's discretion. So he was very much the engine of
21 that, and it certainly wasn't myself in that regard because,
22 like I said, I didn't have an educated opinion of what the
23 strength of the government's case would be. So in that
24 context, it was a self-generated cooperation in that regard.

25 And so I think that answers the question. I don't

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1 know if there's anything else in that regard that the Court
2 wishes to hear at this time.

3 THE COURT: No, no. Thank you. And this is your
4 opportunity, Mr. Dratel, to tell me anything you would like in
5 connection with this sentence.

6 MS. FORNOS: Thank you, your Honor. And I know the
7 Court has read the materials carefully; so I'm not going to
8 belabor them or repeat them. I just sort of wanted to start
9 with the sort of the functional standard, which is sufficient
10 but not greater than necessary. And in this context, I would
11 submit that sufficient but not greater than necessary would be
12 a non-jail term, either time served or probation or whatever
13 that would be. I think that conforms with probation's
14 recommendation as well, and there are three aspects of this that
15 I would point out in terms of projecting in the future, which I
16 would guess, not having been a judge but having done enough
17 sentences that I think it is a significant part of the equation
18 for fashioning a sentence, which is what's going to happen in
19 the future, what will this defendant's life be like not only
20 for himself but also for society. That's what I'm trying to
21 focus on and give the Court a comfort level that is necessary
22 and sufficient for the purposes of that sentence.

23 One, is the cooperation itself in the sentence, that
24 it demonstrates remorse. It demonstrates the wrongfulness of
25 his own conduct, and his willingness to right it as best he

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1 could. He can't go back and undo it, but he undid it in the
2 sense of helping the government to complete its investigation
3 of this conduct.

4 The second is -- the second level of cooperation in
5 the sense that when the Court asks itself deterrent effect or
6 what's the necessary deterrent effect, here's someone who
7 spontaneously, based on his own moral and other calculous said,
8 no, I'm rejecting this opportunity to commit further crimes.
9 I'm going to go and tell the government about this and then
10 proactively work in it in a way that, obviously, subjected him
11 to a certain amount of jeopardy.

12 And fortunately, nothing came of that; so that's good,
13 but it, obviously, generated another prosecution that was
14 important to the government. He, obviously, has not committed
15 any offenses outside of that, even in the -- and we have a
16 period of time that's rather significant. We have a
17 three-and-a-half year period now, I think, since the arrest, or
18 nearly three years -- I'm sorry, about three-and-a-half years
19 since the arrest, I think, that we have for the Court to sort
20 of get a sense of who he's going to be because he has been that
21 person now for three-and-a-half years and, obviously, one is
22 lack of committing any crimes; the second is the rejecting the
23 opportunity to commit an offense.

24 And I think the third is also that his commitment to
25 leading the life he's leading now is manifested also in the

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1 significant and unusual, in my experience, commitment he has
2 made to gainful employment, which is leaving his family for a
3 considerable period of time, going to another location with
4 which he was unfamiliar, but doing that so he could get gainful
5 employment that was good for him, good for his family, good for
6 his future. And all of those factors evidence what the future
7 will be like for him.

8 In addition, there is a significant financial penalty
9 that is a lifetime penalty, to a certain extent, for Mr. Tahir
10 and that he's going to have to live with and fulfill, and
11 that's, again, another deterrent because the last thing he
12 wants is to add to that. I mean, he's -- he has been cognizant
13 of the criminal justice system, what it can do to a person's
14 life and future, and has done what he can to try to ameliorate
15 that for himself and his family. And going forward, all those
16 factors, it provides sufficient punishment.

17 And also in the other aspects that we put in our
18 letter, which is the ostracism, these difficulties, sorting
19 down more kernelized, in terms of his world, his family, those
20 close to him, and the ongoing financial commitment that he has
21 and the obligation that he'll have to the government for a
22 significant period of time, if not for his whole life. If it's
23 less than his whole life, good for the government and good for
24 him, but I suspect that won't be the case.

25 I don't know if there's anything else that the Court

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1 wishes to hear from me because it's all in the papers, and I
2 think that just all of these factors justify amply a sentence
3 of either time served or probation, and that Mr. Tahir has done
4 what he can to demonstrate that he does not require a jail
5 sentence to fulfill the objectives of sentencing.

6 THE COURT: Thank you, Mr. Dratel. Mr. Tahir, is
7 there something you would like to say to me on your behalf in
8 connection with sentence?

9 THE DEFENDANT: Yes. Good morning, your Honor. First
10 of all, I'm very sorry. I'm sorry from my heart what I did. I
11 should not do this, and that's all I can say.

12 THE COURT: So, Mr. Tahir, please stand. Let me begin
13 by saying that you do deserve a jail term, but you know that.
14 What you did was terribly wrong. It was a fraud. It was a
15 corruption of individuals, the straw buyers. It was stealing
16 money that didn't belong to you or those you were working with.
17 It was a wrongful scheme. Even the Treasury check scheme has a
18 certain aspect that you would have been known in your community
19 as someone who was willing to break the law. They came to you.

20 But that said, you have demonstrated an acknowledgment
21 of the serious nature of what you did. I'm impressed that your
22 immediate response, when confronted by the FBI, was to
23 cooperate; that even before your lawyer could carefully
24 evaluate the strength of the government's case against you, you
25 continued your commitment to cooperation; that when you were

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1 presented with another opportunity to engage in an illegal
2 scheme, you chose instead to inform the government.

3 I'm impressed by the fact that you've already paid a
4 price here beyond, of course, the burden of an ongoing
5 prosecution and the disruption that that presents in anyone's
6 life and the anxiety it produces for anyone. You've suffered
7 within your community, which makes it more difficult for you
8 to, of course, engage in criminal activity again if you were
9 tempted to do so.

10 So what I'm going to do here is place you on
11 probation. What that means is that during the period of
12 probation, if you violate the law in any way, you will come
13 back before me for sentence, and at that time, I would be free
14 and able to impose any sentence that I could have imposed
15 today. Do you understand what I'm saying?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: So I'm going to give you a sentence of
18 probation for five years. That's a long time. I think we
19 should know in that period of time whether you've truly changed
20 your life around and made a commitment not to engage in further
21 criminal activity.

22 I want also to see a substantial repayment of the
23 restitution obligation here. I want you to remain gainfully
24 employed and pay a percentage of your income every month
25 towards your restitution obligation. That's part of your

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1 sentence, and it's important to me that you feel in that way
2 the impact of your choices in the past. You understand what
3 I'm saying?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: So I impose a sentence of five years'
6 probation with the following special conditions. First, I
7 adopt the special condition previously read on the record, to
8 which counsel had consented. You shall also report to the
9 probation office in this district within 72 hours. You shall
10 not commit another federal, state or local crime. You shall
11 not illegally possess a controlled substance. You shall submit
12 to the regular drug testing program.

13 You are prohibited from possessing a firearm or other
14 dangerous weapon. You shall cooperate in the collection of
15 DNA. You must pay restitution. You must comply with the
16 standard conditions of probation. You must submit to a
17 reasonable search by the probation department. You must seek
18 and maintain full-time employment. You are to provide the
19 probation department access to any and all requested financial
20 information. You may not incur any new credit card charge or
21 open any new credit line without approval of the probation
22 department.

23 You must notify the U.S. Attorney's Office for this
24 district within 30 days of any change of mailing or residence
25 address that occurs while any portion of restitution remains

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1 unpaid. You shall be supervised by the district of your
2 residence. You shall pay a special assessment of \$200.

3 I decline to impose a fine because of the burden of
4 restitution and forfeiture imposed upon you. I've already read
5 the restitution amount into the record, but I'll read it again,
6 \$723,056.21. The victims are identified in the PSR and I adopt
7 them. You must pay restitution at the rate of 10 percent of
8 your gross monthly income.

9 Counsel, is there any legal reason why I cannot impose
10 the sentence I've described as stated?

11 MS. FORNOS: No, your Honor.

12 MR. DRATEL: No, your Honor.

13 THE COURT: I order the sentence I've described on the
14 record to be imposed as stated. You may be seated, Mr. Tahir.
15 I believe there are open counts?

16 MS. FORNOS: Your Honor, I don't believe there are any
17 open counts. He pled to an information originally, and he was
18 originally charged by complaint.

19 MR. DRATEL: Yes, your Honor, I believe that's the
20 case. I'm almost positive, having just gone over last night
21 some of the -- yes, the plea minutes and all that.

22 THE COURT: Thank you. Well, Miss Rojas will check.
23 Just if there just happens to be an underlying indictment, the
24 government would move to dismiss those counts against this
25 defendant?

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1 MS. FORNOS: Yes, your Honor, absolutely.

2 THE COURT: Thank you. And the restitution
3 obligation, I should say, is imposed jointly and severally with
4 respect to coconspirators to whom it may apply?

5 MS. FORNOS: Yes, your Honor.

6 THE COURT: Thank you. And is the government going to
7 get me a restitution order?

8 MS. FORNOS: We can certainly provide that, your
9 Honor.

10 THE COURT: Thank you.

11 MS. FORNOS: And, your Honor, the forfeiture should
12 also be joint and sever -- the forfeiture amount should also be
13 joint and several with his co-defendants in this case. To the
14 extent that hadn't been made clear, we do want the record to
15 reflect that it is joint and several with the co-defendants.

16 MR. DRATEL: Yes, it should be, your Honor.

17 THE COURT: Well, in the proposed order which was
18 given to me and which I executed at the beginning of this
19 proceeding, it doesn't state that it's imposed jointly and
20 several.

21 MS. FORNOS: Your Honor, if I may, I'd like to orally
22 amend that order of forfeiture on the record to state that it
23 should be joint and several with the other defendants in this
24 matter.

25 THE COURT: Thank you.

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1 MR. DRATEL: No objection, your Honor.

2 THE COURT: Granted. And I have so amended the order.

3 I need to advise the defendant of his right to appeal. I know
4 of no ground for an appeal. You've largely given up your right
5 to appeal from the entry of the plea and, of course, the
6 sentence that I've just imposed is a non-incarceratory
7 sentence, but nonetheless, I'm required by law to advise you of
8 the following.

9 If you're unable to pay the cost of an appeal, you may
10 apply for leave to appeal in forma pauperis. Any appeal of
11 sentence must be filed within 14 days of the judgment of
12 conviction.

13 Miss Fornos, is there anything else we need to do?

14 MS. FORNOS: No, your Honor, not from the government's
15 perspective.

16 THE COURT: Mr. Dratel?

17 MR. DRATEL: No, your Honor. Thank you.

18 THE COURT: Thank you.

19 (Adjourned)
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